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18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20
21 ANTHONY SESSA and MARK SESSA, *on*
behalf of themselves and all others similarly
22 *situated,*

Plaintiffs,

23 v.

24 ANCESTRY.COM OPERATIONS INC., a
25 Virginia Corporation; ANCESTRY.COM
INC., a Delaware Corporation; and
26 ANCESTRY.COM LLC, a Delaware Limited
Liability Company,
27 Defendants.

Case No.: 2:20-cv-02292-GMN-BNW

**AMENDED JOINT DISCOVERY PLAN
AND PROPOSED ORDER**

Complaint filed: Dec. 17, 2020

1 Having met and conferred, the parties to the above-entitled action jointly submit this
2 JOINT DISCOVERY PLAN & PROPOSED ORDER pursuant to Civil Local Rule 26-1.

3 **1. Discovery Cut-Off Date and Discovery Status.**

4 Plaintiffs' Position: Plaintiffs anticipate completing fact discovery within 180 days of April
5 28, 2022, which is the date this case was unstayed following the dismissal of Defendants' appeal
6 of the denial of their anti-SLAPP motion. Accordingly, Plaintiffs propose a fact discovery cut-off
7 date of October 25, 2022.

8
9 Plaintiffs served an initial set of document requests on Defendants on October 20, 2021.
10 Defendants provided responses and objections to those requests on November 19, 2021, stating in
11 response to each request that their position was that discovery was automatically stayed pending
12 the disposition of Defendants' anti-SLAPP appeal and thus Defendants would not be making any
13 production. The parties agreed that Defendants would provide amended responses to Plaintiffs'
14 first set of document requests within two weeks of the stay being lifted, making those amended
15 responses due on May 12, 2022. Plaintiffs expect to serve additional discovery requests after
16 receiving Defendants' amended responses and document production. Plaintiffs also anticipate
17 conducting depositions, both of individual fact witnesses and pursuant to Fed. R. Civ. P. 30(b)(6)
18 after Defendants substantively respond to Plaintiffs' written discovery.

19
20 Defendants' Position: Discovery in this case had been stayed pursuant to Nevada Revised
21 Statute § 41.670 while Ancestry's motion to dismiss pursuant to Nevada's anti-SLAPP statute and
22 Ancestry's subsequent appeal of the Court's decision on that motion were pending. Thus, no
23 discovery schedule had been established in this matter.

24
25 On April 28, 2022, the Court lifted the stay. ECF No. 56. Ancestry agrees that discovery
26 in this matter can be completed within 180 days of that date—October 25, 2022. Ancestry has
27
28

1 agreed to serve revised discovery responses by May 12, 2022. Ancestry also intends to serve its
2 own discovery requests on each of the plaintiffs and to depose them.

3 **2. Amending the Pleadings and Adding Parties, Expert Disclosures, Dispositive**
4 **Motions, and Pretrial Order.**

5 The parties propose amending the deadlines previously set by the Court given the time that
6 has elapsed during the stay of this case.

7 Plaintiffs' Position: Consistent with Local Rule 26-1(b)(2), Plaintiffs propose a deadline
8 for filing motions to amend the pleadings or to add parties that is ninety days before the close of
9 discovery, *i.e.* July 27, 2022.

10 Plaintiffs propose a deadline for Plaintiffs' class certification motion as thirty-five days
11 after the discovery cut-off date, or November 29, 2022.

12 Plaintiffs do not presently anticipate a need for expert testimony. In the event expert
13 testimony is needed, Plaintiffs propose the deadline for merits expert disclosures as thirty days
14 after the Court rules on Plaintiffs' motion for class certification. Plaintiffs propose the deadline for
15 responsive expert disclosures as sixty days after the Court rules on Plaintiffs' motion for class
16 certification.

17 Plaintiffs propose the deadline for dispositive motions as ninety days after the Court rules
18 on Plaintiffs' motion for class certification.

19 Defendants' Position: Ancestry also anticipates filing a motion for summary judgment
20 and may file a motion to deny class certification; Ancestry also anticipates that it may engage
21 experts, including with respect to potential class certification issues. Ancestry proposes that the
22 deadline to file its opposition to plaintiff's motion for class certification as six weeks after plaintiffs
23 file their motion for class certification.

24 **3. Fed. R. Civ. P. 26(a) Disclosures**
25
26
27
28

1 The parties propose exchanging initial disclosures under Rule 26(a) within seven days of
2 the filing of this Discovery Plan, *i.e.* on or before May 19, 2022.

3
4 **4. Alternative Dispute Resolution**

5 Consistent with the Joint Discovery Plan and Proposed Order filed on March 21, 2021
6 (ECF No. 29), the parties would agree, subject to approval from the Court, to participate in private
7 mediation.

8
9 **5. Alternative Forms of Case Disposition**

10 The parties certify that they considered trial by magistrate judge and use of the Short Trial
11 Program. The parties agree that neither are appropriate for this matter.

12 **6. Electronic Evidence**

13 The parties intend to present evidence in electronic format to jurors. The parties will work
14 cooperatively to enter a Stipulated ESI Protocol.

15
16 **7. Topics for Discovery**

17 Plaintiffs' Position: Plaintiffs anticipate seeking discovery on the following topics.
18 Plaintiffs reserve the right to seek discovery on additional topics as the case develops.

19 (1) Documents and testimony showing the economic value of plaintiffs' names and images
20 to Ancestry, including: licensing fees Ancestry pays to third parties for access to
21 Plaintiffs' photographs; conversion rates for users who receive free-trial records and
22 "hint" emails; and Ancestry's statements regarding why they use Plaintiffs' names and
23 images.

24
25 (2) Documents and testimony showing how Ancestry's website functions when presenting
26 Plaintiffs' names, photographs, and personal information in advertisements.

1 (3) Documents and testimony showing Ancestry's expectations regarding how subscribers
2 will use Plaintiffs' photographs.

3 (4) Documents and testimony about privacy and intellectual property concerns related to
4 Ancestry's collection and use of personal information.

5 (5) Documents and testimony showing the number of photographs in Ancestry's database
6 corresponding to Nevada yearbooks, and the number of subscribers in Nevada.

7 Defendants' Position: Ancestry anticipates seeking discovery on the following topics and
8 reserves the right to seek discovery on additional topics as the case develops:
9

10
11 (1) any loss plaintiffs and putative class members purportedly suffered as a result of the
12 alleged conduct;

13 (2) any opportunity plaintiff and putative class members had to monetize their information,
14 including names, yearbook photographs, school names, school location, and other
15 yearbook information;

16
17 (3) any consents by plaintiff or putative class members to publication of that information,
18 including posting of that information online;

19 (4) any efforts by plaintiff or putative class members to maintain the privacy of such
20 information;

21 (5) documents related to any agreements between Ancestry and the putative class
22 members;

23
24 (6) any evidence plaintiff or other class members have an intellectual property right in that
25 information; and
26
27
28

(7) any evidence of emotional harm, mental injury, or distress plaintiff or putative class members allegedly suffered on account of work information being publicly available, including any medical information verifying that harm.

Respectfully submitted,

KNEPPER & CLARK LLC

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 Operations Inc., Ancestry.com Inc., and
 Ancestry.com LLC**

ORDER

IT IS ORDERED that ECF No. 58 is GRANTED.

IT IS FURTHER ORDERED that the parties are to file a stipulation, by 5/20/2022, with a table that enumerates the deadlines discussed at ECF No. 58. IT IS FURTHER ORDERED that the parties must include in the table a deadline for the proposed Joint Pretrial Order which shall be 30 days after the dispositive motion deadline or an order on such motion. This will allow the Clerk's Office to more easily enter the approved deadlines (as well as provide the parties with a more accessible Discovery Plan and Scheduling Order).

IT IS FURTHER ORDERED that the motion hearing set for 5/18/2022 at 11:00 a.m. is VACATED.

IT IS SO ORDERED

DATED: 3:05 pm, May 16, 2022

**BRENDA WEKSLER
 UNITED STATES MAGISTRATE JUDGE**